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Intellectual Property / Technology Law
PO Box 14329
Research Triangle Park, North Carolina 27709

In re Application of :
NOAH et al. :
Application No.: 09/720,832 :
PCT No.: PCT/US99/14845 : DECISION ON PETITION
Int. Filing Date: 30 June 1999 : UNDER 37 CFR 1.137(b)
Priority Date: 30 June 1998 :
Docket No.: ADCS-013US :
For: SYSTEM FOR DELIVERY OF MULTIPLE
CHEMICALS TO PROCESS TOOL

This decision is issued in response to applicant's "Petition for Revival of this Application for Unintentional Abandonment under 37 CFR 1.137(b)" filed 28 March 2001 and applicant's "Request for U.S. Patent and Trademark Office Action on Petition for Revival Filed March 23, 2001 in U.S. Patent Application no. 09/720,832" filed 17 May 2007.

BACKGROUND

On 30 June 1999, applicant filed international application PCT/US99/14845 which claimed a priority date of 30 June 1998. A Demand for International Preliminary Amendment was made by the 19th month from the earliest claimed priority date. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 30 December 2000.

On 28 December 2000, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: a copy of the international application and a preliminary amendment.

On 06 February 2001, the United States Designated/Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495(b)(2)).

On 28 March 2001, applicant filed a "Petition for Revival of this Application for Unintentional Abandonment under 37 CFR 1.137(b)" which included: the basic national fee; the petition to revive fee, and an executed declaration/power of attorney.

On 17 May 2007, applicant filed a "Request for U.S. Patent and Trademark Office Action on Petition for Revival Filed March 23, 2001 in U.S. Patent Application no. 09/720,832."

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, because the international application was filed in the United States Receiving Office, a copy of the international application is not required. The "required reply" is therefore a payment of the basic national fee. The Petition For Revival filed on 28 March 2001 was accompanied by a payment of the basic national fee. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 30 December 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition For Revival was accompanied by a check for the appropriate petition fee. Item (2) is satisfied.

As for item (3), the Petition For Revival expressly states that the "entire delay in filing the required reply from the due date until the filing of this petition was unintentional." Item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition For Revival is granted.

CONCLUSION

All of the requirements of 37 CFR 1.137(b) have been met and applicant's petition to revive is **GRANTED**.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.

A handwritten signature in black ink, appearing to read "Anthony Smith". The signature is fluid and cursive, with the first name "Anthony" written in a larger, more prominent script than the last name "Smith".

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459